

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

KAMAU A. DAVIS,)	Case No. CV 15-0867-JGB (JPR)
)	
Petitioner,)	
)	ORDER TO SHOW CAUSE
vs.)	
)	
JIM McDONNELL, Sheriff,)	
)	
Respondent.)	
)	

On February 6, 2015, Petitioner, a state pretrial detainee, filed a Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241, challenging the apparent denial of his motion to sever the trial of counts in his upcoming criminal prosecution. (Pet. at 3-4 & Attach. Mem. of Law.) Petitioner apparently raised this issue in a petition for writ of mandate filed in the state court of appeal and a habeas petition in the state supreme court; each was denied. (See Pet. Exs. 1 & 2.)

Section 2241(c)(3) permits a federal court to grant relief to a state pretrial detainee who is being held "in custody in violation of the Constitution."¹ But as a general proposition, a

¹Section 2254 does not apply because Petitioner is apparently
(continued...)

1 federal court will not intervene in a pending state criminal
2 proceeding absent extraordinary circumstances involving great and
3 immediate danger of irreparable harm. See Younger v. Harris, 401
4 U.S. 37, 45-46 (1971); see also Fort Belknap Indian Cmty. v.
5 Mazurek, 43 F.3d 428, 431 (9th Cir. 1994) (abstention appropriate
6 if ongoing state judicial proceedings implicate important state
7 interests and offer adequate opportunity to litigate federal
8 constitutional issues). "[O]nly in the most unusual
9 circumstances is a defendant entitled to have federal
10 interposition by way of injunction or habeas corpus until after
11 the jury comes in, judgment has been appealed from and the case
12 concluded in the state courts." Drury v. Cox, 457 F.2d 764, 764-
13 65 (9th Cir. 1972).

14 Younger abstention is appropriate if three criteria are met:
15 (1) the state proceedings are ongoing; (2) the proceedings
16 implicate important state interests; and (3) the state
17 proceedings provide an adequate opportunity to litigate the
18 federal constitutional claims. See Middlesex Cnty. Ethics Comm.
19 v. Garden State Bar Ass'n, 457 U.S. 423, 432 (1982). The Ninth
20 Circuit has articulated a fourth criterion: that the federal
21 action would "enjoin" the state proceeding "or have the practical
22 effect of doing so." Potrero Hills Landfill, Inc. v. Cnty. of
23 Solano, 657 F.3d 876, 882 (9th Cir. 2011) (internal quotation
24 marks omitted).

25 Here, all criteria for abstention appear to be satisfied.
26 Petitioner has apparently not even been tried yet. Further,

27
28 ¹(...continued)
not in custody pursuant to a state-court judgment.

1 criminal proceedings necessarily implicate important state
2 interests. See Younger, 401 U.S. at 43-45. Finally, even though
3 Petitioner apparently seeks to raise in his federal Petition only
4 claims that have already been rejected by the state courts,
5 nothing in the Petition or its attachments indicates that he has
6 not had and indeed will not have, on appeal, an adequate
7 opportunity to litigate any federal constitutional claims.²

8 A federal court may properly intervene when a petitioner
9 makes a "showing of bad faith, harassment, or some other
10 extraordinary circumstance that would make abstention
11 inappropriate." Middlesex, 457 U.S. at 435. Petitioner has not
12 even alleged bad faith or harassment. Though the list of
13 possible extraordinary circumstances justifying intervention has
14 not been fully articulated, see Baffert v. Cal. Horse Racing Bd.,
15 332 F.3d 613, 621 (9th Cir. 2003), the circumstances must create
16 a "pressing need for immediate federal equitable relief, not
17 merely in the sense of presenting a highly unusual factual
18 situation," Kugler v. Helfant, 421 U.S. 117, 125 (1975).

19
20 ²Indeed, when a state criminal case is pending, "a would-be
21 habeas corpus petitioner must await the outcome of his appeal
22 before his state remedies are exhausted, even where the issue to be
23 challenged in the writ of habeas corpus has been finally settled in
24 the state courts." Sherwood v. Tomkins, 716 F.2d 632, 634 (9th
25 Cir. 1983); cf. also Henderson v. Johnson, 710 F.3d 872, 874 (9th
26 Cir. 2013) ("Sherwood stands for the proposition that a district
27 court may not adjudicate a federal habeas petition while a
28 petitioner's direct appeal is pending."). "This is because 'the
pending appeal may result in reversal of the petitioner's
conviction on some other ground, thus mooting the federal
question.'" Alvarez v. Barnes, No. CV 13-367-RGK (CW), 2013 WL
3200514, at *3 (C.D. Cal. June 21, 2013) (quoting Sherwood, 716
F.2d at 634).

1 Here, Petitioner has not explained why he is in immediate
2 need of federal equitable relief, nor has he pointed to any
3 extraordinary circumstance warranting intervention. He asserts
4 that the trial court's apparent refusal to sever trial of the two
5 counts he faces infringes his constitutional right to testify in
6 his own behalf because he desires to testify only as to one of
7 the charges, not the other. (See Pet. Attach. Mem. of Law at 6-
8 7.) But Petitioner's claim does not implicate his custody under
9 § 2241(c)(3) because his right to testify is not one "which is
10 necessarily forfeited by delaying review until after trial."
11 Carden v. Montana, 626 F.2d 82, 84 (9th Cir. 1980) (denying
12 pretrial detainee's speedy-trial habeas claim and distinguishing
13 Double Jeopardy Clause claim because it involves right not to go
14 to trial at all).

15 IT THEREFORE IS ORDERED that within 14 days of the date of
16 this Order, Petitioner show cause in writing, if he has any, why
17 the Court should not deny the petition without prejudice and
18 dismiss this action under Younger. Petitioner is warned that his
19 failure to timely and satisfactorily respond to this Order may
20 result in his Petition being dismissed for the reasons stated
21 above and for failure to prosecute.

22
23
24 DATED: February 11, 2015



JEAN ROSENBLUTH
U.S. MAGISTRATE JUDGE